

ADMINISTRATIVE PANEL DECISION

Datadog, Inc. v. Tracy Jacobson
Case No. D2023-3443

1. The Parties

Complainant is Datadog, Inc., United States of America (“United States”), represented by Noah M. Lerman, United States.

Respondent is Tracy Jacobson, United States.

2. The Domain Name and Registrar

The disputed domain name is <datadog-cloud.com> and is registered with NameCheap, Inc. (“Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (“Center”) on August 11, 2023. On August 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 14, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant (*i.e.*, Tracy Jacobson) and contact information for the disputed domain name that differed from that in the Complaint (*i.e.*, Redacted for Privacy / Privacy Service Provided by Withheld for Privacy ehf) and providing other details related to the registration. The Center sent an email communication to Complainant on August 15, 2023 providing the information disclosed by the Registrar and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on August 18, 2023. Accordingly, the Panel determines that Tracy Jacobson is the appropriate Respondent.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (“Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (“Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on August 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 11, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 13, 2023.

The Center appointed Debra J. Stanek as the sole panelist in this matter on September 22, 2023. The Panel finds that it was properly constituted and has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

Complainant owns United States federal trademark registrations for the mark DATADOG for certain downloadable computer software and software-as-a-service and computer services.

The disputed domain name was created on June 23, 2023; it does not resolve to an active website but was identified by a third party “as a “malicious IP address.”

5. Parties’ Contentions

A. Complainant

1. Identical or Confusingly Similar

In addition to its common law rights in the mark DATADOG, Complainant owns trademark registrations for the mark throughout the world, including United States federal trademark registrations (No. 4,885,599 registered in 2016 and No. 6,225,826 registered in 2020).

Respondent has registered a domain name consisting of Complainant’s mark, plus “-cloud,” which is confusingly similar to Complainant’s mark and would lead a reasonable observer to believe that the disputed domain name is related to Complainant and its mark.

2. Rights or Legitimate Interests

The website for the disputed domain name does not resolve to an IP address. There is no evidence that Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. There is no evidence that any third party individual, business, or organization has been commonly known by the disputed domain name. Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

3. Registered and Used in Bad Faith

The domain name was identified by JumpCloud Inc. in its online list of “July 2023 Incident Indicators of Compromise (IoCs),” as malicious and to be blocked and avoided at all costs. Respondent intentionally attempted to attract Internet users to its pages containing malware or spyware by creating a likelihood of confusion with Complainant’s well-known mark.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

To prevail, a complainant must prove, as to the domain name at issue, that: (a) it is identical or confusingly similar to a mark in which the complainant has rights, (b) respondent has no rights or legitimate interests in respect to it, and (c) it has been registered and is being used in bad faith. Policy, paragraph 4(a). A respondent’s failure to respond does not automatically result in a finding for the complainant; the complainant continues to have the burden of establishing each element. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.3. The Panel may, however, draw appropriate inferences from the default. See Rules, paragraph 14(b).

A. Identical or Confusingly Similar

Complainant has established rights in the DATADOG mark through its trademark registrations.

The disputed domain name at issue is not identical to Complainant's mark. However, disregarding the generic Top-Level Domain, Complainant's DATADOG mark is contained and readily-recognizable within the disputed domain name. See [WIPO Overview 3.0](#), section 1.7 (confusing similarity typically involves assessing whether textual elements of a mark are "recognizable within the disputed domain name"). Further, the addition of the term "-cloud," does not prevent a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.8.

The Panel finds Complainant has established the first element.

B. Rights or Legitimate Interests

Complainant points to the fact that the website for the disputed domain name does not resolve to an IP address in support of its argument that there is no evidence that Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services or that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. Further, nothing in the Whois record suggests that Respondent is commonly known by the disputed domain name.

The Panel concludes, see [WIPO Overview 3.0](#), section 2.1, that Complainant may prevail on this element by making out a *prima facie* case, shifting the burden of production (but not the burden of proof) on this element to Respondent.

The Panel finds that by meeting its burden of presenting a *prima facie* case to which Respondent has not responded, Complainant has established the second element.

C. Registered and Used in Bad Faith

Complainant must establish that the disputed domain name was registered and is being used in bad faith.

The Panel finds that Complainant's mark predates the disputed domain name. Given that the disputed domain name combines Complainant's mark with the term "cloud," which generally corresponds to Complainant's cloud-related services, it seems probable that Respondent was aware of Complainant and its mark and registered the disputed domain name with Complainant in mind. Respondent has not provided any evidence of good faith use which, in any case, appears to be quite implausible, particularly given the identification of the disputed domain name as malicious and to be avoided.

Considering these facts, including the adverse inferences that arise from Respondent's failure to respond to the Complaint, the Panel finds that Complainant has established the third element.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <datadog-cloud.com> be transferred to Complainant.

/Debra J. Stanek/

Debra J. Stanek

Sole Panelist

Date: October 6, 2023